



Reprinted
April 8, 1999

ENGROSSED SENATE BILL No. 432

DIGEST OF SB 432 (Updated April 7, 1999 3:14 pm - DI 96)

Citations Affected: IC 20-8.1; IC 22-2.

Synopsis: Child labor restrictions and employee matters. Defines "nonschool week" to be a week in which school is not in session in any day. Defines "school day" to be a day that contains more than four hours of classroom instruction. Defines "school week" to be a week that contains more than three or more school days. Provides that the employer of a child who is at least 16 years of age and less than 18 years of age must have parental consent on file in the employer's office for the child to work: (1) up to 40 hours per week during school weeks; and (2) 48 hours per week during a nonschool week. Provides that a child who is at least 17 years of age and less than 18 years of age may
(Continued next page)

Effective: July 1, 1999.

Harrison, Howard
(HOUSE SPONSOR — LIGGETT)

January 13, 1999, read first time and referred to Committee on Pensions and Labor.
February 11, 1999, reported favorably — Do Pass.
February 16, 1999, read second time, amended, ordered engrossed.
February 17, 1999, engrossed.
February 22, 1999, read third time, passed. Yeas 49, nays 0.

HOUSE ACTION

March 3, 1999, read first time and referred to Committee on Labor and Employment.
March 29, 1999, amended, reported — Do Pass.
April 7, 1999, read second time, amended, ordered engrossed.

ES 432—LS 7491/DI 96+



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work until 1 a.m. the following day on a night followed by a school day only if the child's employer has the consent of the child's parent on file in the employer's office and no more often than two non-consecutive school nights a week. Provides for a warning letter for a first violation of child labor laws, and for fines for subsequent violations. Provides that one half of the money in the employment of youth fund shall be used each year for the purpose of education regarding child labor laws. Provides that half of the money in the employment of youth fund shall be used for the expenses of hiring and salaries of additional inspectors to enforce child labor laws. Provides that an employee of a seasonal amusement or recreational establishment, an organized camp, or a religious or nonprofit educational conference center that is exempt under the Fair Labor Standards Act who is covered by the Indiana minimum wage law is not entitled to overtime wages for a work week longer than 40 hours.

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April 8, 1999

First Regular Session 111th General Assembly (1999)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 1998 General Assembly.

ENGROSSED SENATE BILL No. 432

A BILL FOR AN ACT to amend the Indiana Code concerning labor and industrial safety.

Be it enacted by the General Assembly of the State of Indiana:

- 1 SECTION 1. IC 20-8.1-4-20 IS AMENDED TO READ AS
2 FOLLOWS [EFFECTIVE JULY 1, 1999]: Sec. 20. (a) This section
3 applies only to occupations for which a child who is fourteen (14) years
4 of age or older and less than eighteen (18) years of age must obtain an
5 employment certificate under this chapter.
6 (b) **As used in this section, "nonschool week" refers to a week**
7 **that contains two (2) or less school days.**
8 (c) **As used in this section, "school day" refers to a day that**
9 **contains more than four (4) hours of classroom instruction.**
10 (d) **As used in this section, "school week" refers to a week that**
11 **contains three (3) or more school days.**
12 ~~(b)~~ (e) The following apply only to a child who is **at least** fourteen
13 (14) years of age ~~or older~~ and less than sixteen (16) years of age:
14 (1) The child may not work before 7:00 a.m. or after 7:00 p.m.
15 However, the child may work until 9:00 p.m. from June 1 through
16 Labor Day.
17 (2) The child may not work:

ES 432—LS 7491/DI 96+



- 1 (A) more than three (3) hours on a school day;
 2 (B) more than eighteen (18) hours in a school week;
 3 (C) more than eight (8) hours on a nonschool day; or
 4 (D) more than forty (40) hours in a nonschool week.
- 5 ~~(e)~~ **(f)** A child who is at least sixteen (16) years of age and less than
 6 ~~eighteen (18)~~ **seventeen (17)** years of age may not: ~~work:~~
 7 (1) **work** for more than eight (8) hours in any one (1) day;
 8 (2) **work** for more than ~~forty (40)~~ **thirty (30)** hours in any one (1)
 9 week;
 10 (3) **work** for more than six (6) days in any one (1) week; or
 11 (4) **begin a work day** before 6:00 a.m.
- 12 **(g) A child who is at least seventeen (17) years of age and less**
 13 **than eighteen (18) years of age may not:**
 14 (1) **work for more than eight (8) hours in any one (1) day;**
 15 (2) **work for more than thirty (30) hours in any one (1) week;**
 16 (3) **work for more than six (6) days in any one (1) week; or**
 17 (4) **begin a work day before 6:00 a.m. on a school day.**
- 18 ~~(d)~~ **(h)** A child who is at least sixteen (16) years of age and less than
 19 ~~seventeen (17)~~ **eighteen (18)** years of age may work until 10:00 p.m.
 20 on nights that are followed by a school day in any occupation except
 21 those which the commissioner of labor determines to be dangerous to
 22 life or limb or injurious to health or morals.
- 23 ~~(e)~~ **(i)** An employer may employ a child who is at least sixteen (16)
 24 years of age and less than seventeen (17) years of age to work until
 25 midnight if:
 26 (1) the work will be performed:
 27 (A) ~~while schools are closed for summer vacation;~~ **during a**
 28 **nonschool week;** or
 29 (B) on days that are not followed by a school day; and
 30 (2) the employer has:
 31 (A) obtained written permission from a child's parent **or legal**
 32 **guardian;** and
 33 (B) placed the written permission on file in the employer's
 34 office.
- 35 **(j) An employer may employ a child who is at least sixteen (16)**
 36 **years of age and less than eighteen (18) years of age up to forty (40)**
 37 **hours during a school week if the employer has:**
 38 (1) **obtained written permission from a child's parent or legal**
 39 **guardian; and**
 40 (2) **placed the written permission on file in the employer's**
 41 **office.**
- 42 ~~(f)~~ **(k)** If an employer has obtained written permission required

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under subsection ~~(e)~~, **(h)**, the employer may employ a child who is at least sixteen (16) years of age but less than eighteen (18) years of age for periods that do not exceed a total of nine (9) hours in any one (1) day and a total of forty-eight (48) hours in any one (1) **nonschool** week. ~~during summer vacation from school.~~

~~(g)~~ **(l)** A child who is

~~(1)~~ seventeen (17) years of age or older but less than eighteen (18) years of age ~~and~~

~~(2) a student in grades 9 through 12;~~

may work until 11:30 p.m. on nights that are followed by a school day **if the employer has obtained written permission from the child's parent or legal guardian and placed the permission on file in the employer's office.** A child covered by this subsection may work ~~later than 11:30 p.m. on nights followed by a school day~~ **until 1 a.m. the following day** if the employer has obtained written permission from the child's parent **or legal guardian** and placed the permission on file in the employer's office. However, the nights followed by a school day on which a child works ~~later than 11:30 p.m. until 1 a.m. the following day~~ may not be consecutive and may not exceed two (2) nights per week.

~~(h)~~ **(m)** Children who are sixteen (16) years of age or older and less than eighteen (18) years of age may be employed the same daily and weekly hours and at the same times of day as adults if they fit into any one (1) of the following categories:

(1) They are a high school graduate.

(2) They have completed an approved vocational or special education program.

(3) They are not enrolled in a regular school term.

SECTION 2. IC 20-8.1-4-23 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 1999]: Sec. 23. (a) Every person, firm, corporation, or company which employs any child who is fourteen (14) years of age or older and less than eighteen (18) years of age in an occupation for which the child must obtain an employment certificate shall post and keep posted, in a conspicuous place or in places where notices to employees are customarily posted, a printed notice. This notice shall state:

(1) the maximum number of hours these children may be employed or permitted to work in each day of the week; **and**

(2) the hours of beginning and ending each day. ~~and~~

~~(3) the names and ages of the children employed there.~~

The printed forms for this notice shall be furnished by the department of labor.



(b) The employment of children for a longer time on any day than is stated in the notice is a violation of this chapter.

SECTION 3. IC 20-8.1-4-31 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 1999]: Sec. 31. (a) A person, firm, limited liability company, or corporation that violates this chapter may be assessed the following civil penalties by the department of labor:

(1) For an employment certificate violation under section 1 or 13 of this chapter, the following:

(A) A warning letter for any violations identified during an initial inspection.

(B) ~~Twenty-five~~ **Fifty** dollars ~~(\$25)~~ **(\$50)** per instance for ~~each~~ **a second** violation identified in a subsequent inspection.

(C) ~~One hundred~~ **Seventy-five** dollars ~~(\$100)~~ **(\$75)** per instance for ~~subsequent violations~~ **a third violation** that

(i) ~~are~~ **is** identified in ~~an~~ **a** subsequent inspection subsequent to the inspection under clause (B); and

(ii) occur not more than two (2) years after a prior violation.

(D) **One hundred dollars (\$100) per instance for a fourth or subsequent violation that:**

(i) **is identified in an inspection subsequent to the inspection under clause (C); and**

(ii) **occurs not more than two (2) years after a prior violation.**

(2) For a posting violation under section 23 of this chapter, the following:

(A) A warning letter for any violations identified during an initial inspection.

(B) ~~Twenty-five~~ **Fifty** dollars ~~(\$25)~~ **(\$50)** per instance for each violation identified in a subsequent inspection.

(C) ~~Twenty-five~~ **Seventy-five** dollars ~~(\$25)~~ **(\$75)** per instance for ~~subsequent violations~~ **a third violation** that

(i) ~~are~~ **is** identified in ~~an~~ **a** subsequent inspection subsequent to the inspection under clause (B); and

(ii) occur not more than two (2) years after a prior violation.

(D) **One hundred dollars (\$100) per instance for a fourth or subsequent violation that:**

(i) **is identified in an inspection subsequent to the inspection under clause (C); and**

(ii) **occurs not more than two (2) years after a prior violation.**

(3) For a termination notice violation under section 11 of this chapter, the following:



- 1 (A) A warning letter for any violations identified during an
 2 initial inspection.
 3 (B) ~~Twenty-five~~ **Fifty** dollars (~~\$25~~) (**\$50**) per instance for each
 4 violation identified in a subsequent inspection.
 5 (C) ~~Fifty~~ **Seventy-five** dollars (~~\$50~~) (**\$75**) per instance for
 6 ~~subsequent violations~~ **a third violation** that
 7 (i) ~~are~~ **is** identified in ~~an~~ **a** ~~subsequent~~ inspection.
 8 ~~subsequent to the inspection under clause (B); and~~
 9 (ii) ~~occur not more than two (2) years after a prior violation.~~
 10 **(D) One hundred dollars (\$100) per instance for a fourth**
 11 **or subsequent violation that:**
 12 (i) **is identified in an inspection subsequent to the**
 13 **inspection under clause (C); and**
 14 (ii) **occurs not more than two (2) years after a prior**
 15 **violation.**
 16 (4) For an hour violation of not more than thirty (30) minutes
 17 under section 20 of this chapter, the following:
 18 (A) A warning letter for any violations identified during an
 19 initial inspection.
 20 (B) ~~Twenty-five~~ **Fifty** dollars (~~\$25~~) (**\$50**) per instance for each
 21 violation identified in a subsequent inspection.
 22 (C) ~~Twenty-five~~ **Seventy-five** dollars (~~\$25~~) (**\$75**) per instance
 23 for ~~subsequent violations~~ **a third violation** that
 24 (i) ~~are~~ **is** identified in ~~an~~ **a** ~~subsequent~~ inspection.
 25 ~~subsequent to the inspection under clause (B); and~~
 26 (ii) ~~occur not more than two (2) years after a prior violation.~~
 27 **(D) One hundred dollars (\$100) per instance for a fourth**
 28 **or subsequent violation that:**
 29 (i) **is identified in an inspection subsequent to the**
 30 **inspection under clause (C); and**
 31 (ii) **occurs not more than two (2) years after a prior**
 32 **violation.**
 33 (5) For an hour violation of more than (30) minutes under section
 34 20 of this chapter, the following:
 35 (A) A warning letter for any violations identified during an
 36 initial inspection.
 37 (B) ~~Fifty~~ **One hundred** dollars (~~\$50~~) (**\$100**) per instance for
 38 each violation identified in a subsequent inspection.
 39 (C) ~~Seventy-five~~ **Two hundred** dollars (~~\$75~~) (**\$200**) per
 40 instance for ~~subsequent violations~~ **a third violation** that
 41 (i) ~~are~~ **is** identified in ~~an~~ **a** ~~subsequent~~ inspection.
 42 ~~subsequent to the inspection under clause (B); and~~



(ii) occur not more than two (2) years after a prior violation.
(D) Four hundred dollars (\$400) per instance for a fourth or subsequent violation that:

(i) is identified in an inspection subsequent to the inspection under clause (C); and

(ii) occurs not more than two (2) years after a prior violation.

(6) For a hazardous occupation violation under section 25 of this chapter, the following:

(A) A warning letter for any violations identified during an initial inspection.

(B) One hundred dollars (\$100) per instance for each violation identified in a subsequent inspection.

(C) ~~One~~ **Two** hundred dollars ~~(\$100)~~ **(\$200)** per instance for ~~subsequent violations~~ **a third violation** that

~~(i) are~~ **is** identified in ~~an~~ **a** subsequent inspection. subsequent to the inspection under clause (B); and

~~(ii) occur not more than two (2) years after a prior violation.~~

(D) Four hundred dollars (\$400) per instance for a fourth or subsequent violation that:

(i) is identified in an inspection subsequent to the inspection under clause (C); and

(ii) occurs not more than two (2) years after a prior violation.

(7) For an age violation under section 21 or 21.5 of this chapter, the following:

(A) A warning letter for any violations identified during an initial inspection.

(B) One hundred dollars (\$100) per instance for each violation identified in a subsequent inspection.

(C) ~~One~~ **Two** hundred dollars ~~(\$100)~~ **(\$200)** per instance for ~~subsequent violations~~ **a third violation** that

~~(i) are~~ **is** identified in ~~an~~ **a** subsequent inspection. subsequent to the inspection under clause (B); and

~~(ii) occur not more than two (2) years after a prior violation.~~

(D) Four hundred dollars (\$400) per instance for a fourth or subsequent violation that:

(i) is identified in an inspection subsequent to the inspection under clause (C); and

(ii) occurs not more than two (2) years after a prior violation.

(8) For each minor employed in violation of section 21(b) of this



chapter, the following:

(A) A warning letter for any violations identified during an initial inspection.

(B) One hundred dollars (\$100) per instance for each violation identified in a subsequent inspection.

(C) ~~One~~ **Two** hundred dollars (~~\$100~~) (**\$200**) per instance for subsequent violations **a third violation** that

(i) ~~are~~ **is** identified in ~~an~~ **a** subsequent inspection subsequent to the inspection under clause (B); and

(ii) ~~occur not more than two (2) years after a prior violation.~~

(D) **Four** hundred dollars (**\$400**) per instance for a fourth or subsequent violation that:

(i) **is identified in an inspection subsequent to the inspection under clause (C); and**

(ii) **occurs not more than two (2) years after a prior violation.**

(b) A civil penalty assessed under subsection (a):

(1) is subject to IC 4-21.5-3-6; and

(2) becomes effective without a proceeding under IC 4-21.5-3 unless a person requests an administrative review not later than thirty (30) days after notice of the assessment is given.

(c) For purposes of determining whether a second violation has occurred when assessing a civil penalty under subsection (a), a first violation expires one (1) year after the date of issuance of a warning letter by the department of labor under subsection (a).

(d) **For purposes of determining recurring violations of this section, each location of an employer shall be considered separate and distinct from another location of the same employer.**

(e) There is established an employment of youth fund for the purpose of educating affected parties on the purposes and contents of this chapter and the responsibilities of all parties under this chapter. **One-half (1/2) of the fund each year shall be used for the purpose of the education provision of this subsection. This portion of the fund may be used to award grants to provide educational programs. The remaining one-half (1/2) of the fund shall be used each year for the expenses of hiring and salaries of additional inspectors to enforce this chapter under section 29 of this chapter. All inspectors hired to enforce this chapter shall also be available to educate affected parties on the purposes and contents of this chapter and the responsibilities of all parties under this chapter.** The fund shall be administered by the department of labor. The expenses of administering the fund shall be paid from money in the



1 fund. The treasurer of state shall invest the money in the fund not
 2 currently needed to meet the obligations of the fund in the same
 3 manner as other public funds may be invested. Interest that accrues
 4 from these investments shall be deposited in the fund. Money in the
 5 fund at the end of a state fiscal year does not revert to the state general
 6 fund. Revenue received from civil penalties under this section shall be
 7 deposited in the employment of youth fund.

8 SECTION 4. IC 22-2-2-4, AS AMENDED BY SEA 40-1999, IS
 9 AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 1999]:

10 Sec. 4. (a) Every employer employing four (4) or more employees
 11 during a work week shall:

12 (1) in any work week beginning on or after July 1, 1968, in which
 13 he is subject to the provisions of this chapter, pay each of his
 14 employees wages of not less than one dollar and twenty-five cents
 15 (\$1.25) per hour;

16 (2) in any work week beginning on or after July 1, 1977, in which
 17 he is subject to this chapter, pay each of his employees wages of
 18 not less than one dollar and fifty cents (\$1.50) per hour;

19 (3) in any work week beginning on or after January 1, 1978, in
 20 which he is subject to this chapter, pay each of his employees
 21 wages of not less than one dollar and seventy-five cents (\$1.75)
 22 per hour; and

23 (4) in any work week beginning on or after January 1, 1979, in
 24 which he is subject to this chapter, pay each of his employees
 25 wages of not less than two dollars (\$2) per hour.

26 (b) Except as provided in subsection (c), every employer employing
 27 at least two (2) employees during a work week shall, in any work week
 28 in which the employer is subject to this chapter, pay each of the
 29 employees in any work week beginning on and after July 1, 1990, and
 30 before October 1, 1998, wages of not less than three dollars and
 31 thirty-five cents (\$3.35) per hour.

32 (c) An employer subject to subsection (b) is permitted to apply a "tip
 33 credit" in determining the amount of cash wage paid to tipped
 34 employees. In determining the wage an employer is required to pay a
 35 tipped employee, the amount paid the employee by the employee's
 36 employer shall be an amount equal to:

37 (1) the cash wage paid the employee which for purposes of the
 38 determination shall be not less than the cash wage required to be
 39 paid to employees covered under the federal Fair Labor Standards
 40 Act of 1938, as amended (29 U.S.C. 203(m)(1)) on August 20,
 41 1996, which amount is two dollars and thirteen cents (\$2.13) an
 42 hour; and



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(2) an additional amount on account of the tips received by the employee, which amount is equal to the difference between the wage specified in subdivision (1) and the wage in effect under subsections (b), (f), and (g).

An employer is responsible for supporting the amount of tip credit taken through reported tips by the employees.

(d) No employer having employees subject to any provisions of this section shall discriminate, within any establishment in which employees are employed, between employees on the basis of sex by paying to employees in such establishment a rate less than the rate at which he pays wages to employees of the opposite sex in such establishment for equal work on jobs the performance of which requires equal skill, effort, and responsibility, and which are performed under similar working conditions, except where such payment is made pursuant to:

- (1) a seniority system;
- (2) a merit system;
- (3) a system which measures earnings by quantity or quality of production; or
- (4) a differential based on any other factor other than sex.

(e) An employer who is paying a wage rate differential in violation of subsection (d) shall not, in order to comply with subsection (d), reduce the wage rate of any employee, and no labor organization, or its agents, representing employees of an employer having employees subject to subsection (d) shall cause or attempt to cause such an employer to discriminate against an employee in violation of subsection (d).

(f) Except as provided in subsection (c), every employer employing at least two (2) employees during a work week shall, in any work week in which the employer is subject to this chapter, pay each of the employees in any work week beginning on or after October 1, 1998, and before March 1, 1999, wages of not less than four dollars and twenty-five cents (\$4.25) per hour.

(g) Except as provided in subsections (c) and (i), every employer employing at least two (2) employees during a work week shall, in any work week in which the employer is subject to this chapter, pay each of the employees in any work week beginning on or after March 1, 1999, wages of not less than five dollars and fifteen cents (\$5.15) an hour.

(h) This section does not apply if an employee:

- (1) provides companionship services to the aged and infirm (as defined in 29 CFR 552.6); and



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(2) is employed by an employer or agency other than the family or household using the companionship services, as provided in 29 CFR 552.109 (a).

(i) This subsection applies only to an employee who has not attained the age of twenty (20) years. Instead of the rates prescribed by subsections (c), (f), and (g), an employer may pay an employee of the employer, during the first ninety (90) consecutive calendar days after the employee is initially employed by the employer, a wage which is not less than four dollars and twenty-five cents (\$4.25) per hour, effective March 1, 1999. However, no employer may take any action to displace employees (including partial displacements such as reduction in hours, wages, or employment benefits) for purposes of hiring individuals at the wage authorized in this subsection.

(j) Except as otherwise provided in this section, no employer shall employ any employee for a workweek longer than forty (40) hours unless the employee receives compensation for employment in excess of the hours above specified at a rate not less than one and one-half (1.5) times the regular rate at which he is employed.

(k) For purposes of this section the following apply:

(1) "Overtime compensation" means the compensation required by subsection (j).

(2) "Compensatory time" and "compensatory time off" mean hours during which an employee is not working, which are not counted as hours worked during the applicable workweek or other work period for purposes of overtime compensation, and for which the employee is compensated at the employee's regular rate.

(3) "Regular rate" means the rate at which an employee is employed is considered to include all remuneration for employment paid to, or on behalf of, the employee, but is not considered to include the following:

(A) Sums paid as gifts, payments in the nature of gifts made at Christmas time or on other special occasions, as a reward for service, the amounts of which are not measured by or dependent on hours worked, production, or efficiency.

(B) Payments made for occasional periods when no work is performed due to vacation, holiday, illness, failure of the employer to provide sufficient work, or other similar cause, reasonable payments for traveling expenses, or other expenses, incurred by an employee in the furtherance of his employer's interests and properly reimbursable by the employer, and other similar payments to an employee which are not made as



1 compensation for his hours of employment.

2 (C) Sums paid in recognition of services performed during a
3 given period if:

4 (i) both the fact that payment is to be made and the amount
5 of the payment are determined at the sole discretion of the
6 employer at or near the end of the period and not pursuant
7 to any prior contract, agreement, or promise causing the
8 employee to expect the payments regularly;

9 (ii) the payments are made pursuant to a bona fide profit
10 sharing plan or trust or bona fide thrift or savings plan,
11 meeting the requirements of the administrator set forth in
12 appropriately issued regulations, having due regard among
13 other relevant factors, to the extent to which the amounts
14 paid to the employee are determined without regard to hours
15 of work, production, or efficiency; or

16 (iii) the payments are talent fees paid to performers,
17 including announcers, on radio and television programs.

18 (D) Contributions irrevocably made by an employer to a
19 trustee or third person pursuant to a bona fide plan for
20 providing old age, retirement, life, accident, or health
21 insurance or similar benefits for employees.

22 (E) Extra compensation provided by a premium rate paid for
23 certain hours worked by the employee in any day or workweek
24 because those hours are hours worked in excess of eight (8) in
25 a day or in excess of the maximum workweek applicable to the
26 employee under subsection (h) or in excess of the employee's
27 normal working hours or regular working hours, as the case
28 may be.

29 (F) Extra compensation provided by a premium rate paid for
30 work by the employee on Saturdays, Sundays, holidays, or
31 regular days of rest, or on the sixth or seventh day of the
32 workweek, where the premium rate is not less than one and
33 one-half (1.5) times the rate established in good faith for like
34 work performed in nonovertime hours on other days.

35 (G) Extra compensation provided by a premium rate paid to
36 the employee, in pursuance of an applicable employment
37 contract or collective bargaining agreement, for work outside
38 of the hours established in good faith by the contract or
39 agreement as the basic, normal, or regular workday (not
40 exceeding eight hours) or workweek (not exceeding the
41 maximum workweek applicable to the employee under
42 subsection (a)) where the premium rate is not less than one



and one-half (1.5) times the rate established in good faith by the contract or agreement for like work performed during the workday or workweek.

(l) No employer shall be considered to have violated subsection (j) by employing any employee for a workweek in excess of that specified in subsection (a) without paying the compensation for overtime employment prescribed therein if the employee is so employed:

(1) in pursuance of an agreement, made as a result of collective bargaining by representatives of employees certified as bona fide by the National Labor Relations Board, which provides that no employee shall be employed more than one thousand forty (1,040) hours during any period of twenty-six (26) consecutive weeks; or
 (2) in pursuance of an agreement, made as a result of collective bargaining by representatives of employees certified as bona fide by the National Labor Relations Board, which provides that during a specified period of fifty-two (52) consecutive weeks the employee shall be employed not more than two thousand two hundred forty (2,240) hours and shall be guaranteed not less than one thousand eight hundred forty (1,840) hours (or not less than forty-six (46) weeks at the normal number of hours worked per week, but not less than thirty (30) hours per week) and not more than two thousand eighty (2,080) hours of employment for which the employee shall receive compensation for all hours guaranteed or worked at rates not less than those applicable under the agreement to the work performed and for all hours in excess of the guaranty which are also in excess of the maximum workweek applicable to the employee under subsection (a) or two thousand eighty (2,080) in that period at rates not less than one and one-half (1.5) times the regular rate at which the employee is employed. or

(m) No employer shall be considered to have violated subsection (j) by employing any employee for a workweek in excess of the maximum workweek applicable to the employee under subsection (a) if the employee is employed pursuant to a bona fide individual contract, or pursuant to an agreement made as a result of collective bargaining by representatives of employees, if the duties of the employee necessitate irregular hours of work, and the contract or agreement includes the following:

(1) Specifies a regular rate of pay of not less than the minimum hourly rate provided in subsections (c), (f), (g), and (i) (whichever is applicable) and compensation at not less than one and one-half (1.5) times that rate for all hours worked in excess of the



1 maximum workweek.

2 (2) Provides a weekly guaranty of pay for not more than sixty
3 hours based on the rates so specified.

4 (n) No employer shall be considered to have violated subsection (j)
5 by employing any employee for a workweek in excess of the maximum
6 workweek applicable to the employee under that subsection if, pursuant
7 to an agreement or understanding arrived at between the employer and
8 the employee before performance of the work, the amount paid to the
9 employee for the number of hours worked by him in the workweek in
10 excess of the maximum workweek applicable to the employee under
11 that subsection:

12 (1) in the case of an employee employed at piece rates, is
13 computed at piece rates not less than one and one-half (1.5) times
14 the bona fide piece rates; applicable to the same work when
15 performed during nonovertime hours; ~~or~~

16 (2) in the case of an employee performing two (2) or more kinds
17 of work for which different hourly or piece rates have been
18 established, is computed at rates not less than one and one-half
19 (1.5) times those bona fide rates; applicable to the same work
20 when performed during nonovertime hours; or

21 (3) is computed at a rate not less than one and one-half (1.5) times
22 the rate established by the agreement or understanding as the
23 basic rate to be used in computing overtime compensation
24 thereunder, provided that the rate so established shall be
25 substantially equivalent to the average hourly earnings of the
26 employee, exclusive of overtime premiums, in the particular work
27 over a representative period of time;

28 and if the employee's average hourly earnings for the workweek
29 exclusive of payments described in this section are not less than the
30 minimum hourly rate required by applicable law, and extra overtime
31 compensation is properly computed and paid on other forms of
32 additional pay required to be included in computing the regular rate.

33 (o) Extra compensation paid as described in this section shall be
34 creditable toward overtime compensation payable pursuant to this
35 section.

36 (p) No employer shall be considered to have violated subsection (j)
37 by employing any employee of a retail or service establishment for a
38 workweek in excess of the applicable workweek specified therein, if:

39 (1) the regular rate of pay of the employee is in excess of one and
40 one-half (1.5) times the minimum hourly rate applicable to the
41 employee under section 2 of this chapter; and

42 (2) more than half of the employee's compensation for a

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1 representative period (not less than one (1) month) represents
2 commissions on goods or services.

3 In determining the proportion of compensation representing
4 commissions, all earnings resulting from the application of a bona fide
5 commission rate shall be considered commissions on goods or services
6 without regard to whether the computed commissions exceed the draw
7 or guarantee.

8 (q) No employer engaged in the operation of a hospital or an
9 establishment which is an institution primarily engaged in the care of
10 the sick, the aged, or the mentally ill or defective who reside on the
11 premises shall be considered to have violated subsection (j) if, pursuant
12 to an agreement or understanding arrived at between the employer and
13 the employee before performance of the work, a work period of
14 fourteen (14) consecutive days is accepted in lieu of the workweek of
15 seven (7) consecutive days for purposes of overtime computation and
16 if, for his employment in excess of eight (8) hours in any workday and
17 in excess of eighty (80) hours in that fourteen (14) day period, the
18 employee receives compensation at a rate not less than one and
19 one-half (1.5) times the regular rate at which the employee is
20 employed.

21 (r) No employer shall employ any employee in domestic service in
22 one (1) or more households for a workweek longer than forty (40)
23 hours unless the employee receives compensation for that employment
24 in accordance with subsection (j).

25 (s) In the case of an employee of an employer engaged in the
26 business of operating a street, suburban or interurban electric railway,
27 or local trolley or motorbus carrier (regardless of whether or not the
28 railway or carrier is public or private or operated for profit or not for
29 profit), in determining the hours of employment of such an employee
30 to which the rate prescribed by subsection (j) applies there shall be
31 excluded the hours the employee was employed in charter activities by
32 the employer if both of the following apply:

33 (1) The employee's employment in the charter activities was
34 pursuant to an agreement or understanding with the employer
35 arrived at before engaging in that employment.

36 (2) If employment in the charter activities is not part of the
37 employee's regular employment.

38 (t) Any employer may employ any employee for a period or periods
39 of not more than ten (10) hours in the aggregate in any workweek in
40 excess of the maximum workweek specified in subsection (j) without
41 paying the compensation for overtime employment prescribed in
42 subsection (j), if during that period or periods the employee is receiving

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- 1 remedial education that:
- 2 (1) is provided to employees who lack a high school diploma or
- 3 educational attainment at the eighth grade level;
- 4 (2) is designed to provide reading and other basic skills at an
- 5 eighth grade level or below; and
- 6 (3) does not include job specific training.
- 7 (u) Subsection (j) does not apply to an employee of a motion picture
- 8 theater.
- 9 **(v) Subsection (j) does not apply to an employee of a seasonal**
- 10 **amusement or recreational establishment, an organized camp, or**
- 11 **a religious or nonprofit educational conference center that is**
- 12 **exempt under the federal Fair Labor Standards Act of 1938, as**
- 13 **amended (29 U.S.C. 213).**

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COMMITTEE REPORT

Mr. President: The Senate Committee on Pensions and Labor, to which was referred Senate Bill No. 432, has had the same under consideration and begs leave to report the same back to the Senate with the recommendation that said bill DO PASS.

(Reference is made to Senate Bill 432 as introduced.)

HARRISON, Chairperson

Committee Vote: Yeas 9, Nays 0.

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SENATE MOTION

Mr. President: I move that Senate Bill 432 be amended to read as follows:

Page 2, line 6, delete "work".

Page 2, line 7, after "(1)" insert "**work**".

Page 2, line 8, after "(2)" insert "**work**".

Page 2, line 8, delete "or".

Page 2, line 9, after "(3)" insert "**work**".

Page 2, line 9, delete "." and insert "; **or**".

Page 2, between lines 9 and 10, begin a new line block indented and insert:

"(4) begin a work day before 6:00 a.m. on a school day."

(Reference is to SB 432 as printed February 12, 1999.)

HARRISON

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SENATE MOTION

Mr. President: I move that Senator Howard be added as coauthor of Senate Bill 432.

HARRISON

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COMMITTEE REPORT

Mr. Speaker: Your Committee on Labor and Employment, to which was referred Senate Bill 432, has had the same under consideration and begs leave to report the same back to the House with the recommendation that said bill be amended as follows:

Page 1, delete everything after the enacting clause and insert the following:

(SEE TEXT OF BILL)

and when so amended that said bill do pass.

(Reference is to SB432 as reprinted February 17, 1999.)

LIGGETT, Chair

Committee Vote: yeas 8, nays 0.

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HOUSE MOTION

Mr. Speaker: I move that Engrossed Senate Bill 432 be amended to read as follows:

Page 1, line 6, after "a week" delete "in".

Page 1, line 7, delete "which school is not in session on any day." and insert "**that contains two (2) or less school days.**".

Page 1, between lines 7 and 8, begin a new paragraph and insert:

"(c) As used in this section, "school day" refers to a day that contains more than four (4) hours of classroom instruction.

(d) As used in this section, "school week" refers to a week that contains three (3) or more school days."

Page 1, line 8, delete "(c)" and insert "(e)".

Page 1, line 11, reset in roman "from June 1 through".

Page 1, line 12, reset in roman "Labor Day."

Page 1, line 12, delete "during a nonschool week."

Page 2, line 1, delete "(d)" and insert "(f)".

Page 2, line 8, delete "(e)" and insert "(g)".

Page 2, line 14, delete "(f)" and insert "(h)".

Page 2, line 19, delete "(g)" and insert "(i)".

Page 2, line 31, delete "(h)" and insert "(j)".

Page 2, line 38, delete "(i)" and insert "(k)".

Page 3, line 2, delete "(j)" and insert "(l)".

Page 3, line 17, delete "(k)" and insert "(m)".

(Reference is to ESB 432 as printed March 30, 1999.)

LIGGETT

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